In the Supreme Court of the United States.

OCTOBER TERM, 1897.

THE UNITED STATES, APPELLANT,
v.
ALEXANDER MURPHY & CO. } No. 159.

BRIEF FOR THE UNITED STATES.

STATEMENT.

On August 30, 1894, Alexander Murphy & Co. imported into New York certain merchandise, consisting of worsted dress goods. The collector classified this merchandise and assessed it for duty under paragraph 395 of the act of October 1, 1890 (26 Stats., 567), at 12 cents per square yard and 50 per cent ad valorem. Against this action of the collector the importers protested, claiming the goods dutiable under paragraph 283 of the tariff act of August 27, 1894 (28 Stats., 509), at 40 per cent or 50 per cent ad valorem, according to the value per pound. The Board of General Appraisers overruled the protest. (Opinion, Sharretts, G. A., Record, p. 6.) The importers

carried the matter to the circuit court, which reversed the decision of the Board of General Appraisers. (Opinion, Townsend, D. J., Record, p. 12.) On an appeal to the circuit court of appeals the decision of the circuit court was affirmed. (Opinion, Lacombe, C. J., Record, p. 19.) The case is brought here by writ of certiorari.

The character of the imported goods and the action of the collector in classifying them, are defined in a stipulation of counsel, printed in the record, page 11, as follows:

> It is admitted by counsel for both parties hereto that the classification of the merchandise by the collector was worsted dress goods, at 12 cents per square yard and 50 per cent ad valorem, under schedule K, paragraph 395, of the tariff act of October 1, 1890.
>
> It is further conceded and stipulated by counsel for the respective parties hereto that the merchandise in controversy is worsted dress goods made from the fleece of the sheep, which has been combed and spun into worsted yarn, and is not composed of the hair of the camel, goat, alpaca, or other animal than sheep.

Paragraph 395, of Schedule K.—"Wool and manufactures of wool," of the act of October 1, 1890, reads:

> 395. On women's and children's dress goods, coat linings, Italian cloth, bunting, and goods of similar description or character, composed wholly or in part of wool, worsted, the hair of the camel, goat, alpaca, or other animals, and not specially provided for in this act, the duty shall be twelve cents per square yard, and in addition thereto fifty per centum ad

valorem: *Provided*, That on all such goods weighing over four ounces per square yard, the duty per pound shall be four times the duty imposed by this act on a pound of unwashed wool of the first class, and in addition thereto fifty per centum ad valorem.

Paragraph 283 of Schedule K.—"Wool and manufactures of wool," of the act of August 27, 1894, provides:

283. On women's and children's dress goods, coat linings, Italian cloth, bunting, or goods of similar description or character, and on all manufactures, composed wholly or in part of wool, worsteds, the hair of the camel, goat, alpaca, or other animals, including such as have india rubber as a component material, and not specially provided for in this act, valued at not over fifty cents per pound, forty per centum ad valorem; valued at more than fifty cents per pound, fifty per centum ad valorem.

Paragraphs 280 to 286, inclusive, under "Schedule K.—Wool and manufactures of wool," of the act of 1894, provide for duties on articles manufactured out of the wool of the sheep, or the hair of the camel, goat, alpaca, or other like animals. The concluding paragraph in this schedule reads:

297. The reduction of the rates of duty herein provided for manufactures of wool shall take effect January first, eighteen hundred and ninety-five.

The question is, whether worsted dress goods, made from the fleece of the sheep, are manufactures of wool within the meaning of this paragraph. If they are, the collector was right; if not, he was wrong.

ARGUMENT.

I.

Worsted goods are made of wool and are manufactures of wool.

The distinction between worsted and woolen goods, when it existed in our tariff laws, rested not upon the material but the process of manufacture. Both goods were manufactured articles, and both were manufactured of wool, but in manufacturing them different processes were used. Worsted is a term used to denote the manner in which wool has been manufactured. The distinction between woolen and worsted does not arise until some article has been manufactured of wool. Then, if it has been manufactured in one way, it is a woolen article; if manufactured in another way, it is a worsted article, but both are manufactures of wool.

> Worsted is made by combing the long-fibered wools so that the fibers shall lie or be arranged alongside of each other, while wool is worked by carding so as to interlock the fibers with each other. (Judge Blatchford, in *Cahn* v. *Seeberger*, 30 Fed. Rep., 425, 426, quoted by Mr. Justice Gray in the statement of *Seeberger* v. *Cahn*, 137 U. S., 95, 96.)

In the early part of this century the carding and combing of wool, which resulted in woolen and worsted yarns respectively, were done by hand. Only the longer and coarser wool could thus be combed and made into worsted yarn, while the shorter and finer wool was made into woolen yarn. These fabrics required a number of additional finishing processes, increasing the labor and cost involved, which were not required for the worsted fabrics.

The latter were necessarily coarser and of an inferior quality, and were usually called "stuffs." Gradually, through the introduction of machinery and improved processes of manufacture, it became possible to comb shorter and finer varieties of wool, and thus to manufacture worsted goods of higher grade and better quality. In the sixties the sharp distinction between woolen and worsteds began to disappear, and in the eighties the two processes of manufacturing woolen and worsted goods had overlapped one another. The overlapping process, the approximation of worsted to woolen goods, the equalization of the cost of manufacture, and the similarity of the uses to which the products were put, resulted, not only in making the classification of woolens and worsteds for customs purposes difficult, but in removing the reason for any distinction between them in the matter of duties levied.

The result was, that by the so-called Dingley act of May 9, 1890 (26 Stat., 105), Congress designedly wiped out the distinction for tariff purposes between worsteds and woolens, directing the Secretary of the Treasury "to classify as woolen cloths all imports of worsted cloths, whether known under the name of worsted cloth or under the names of worsted, or diagonals, or otherwise."

Since May 9, 1890, the same duties have been levied upon woolens and worsteds. The so-called McKinley act of October 1, 1890, and the so-called Wilson act of August 27, 1894, while mentioning worsteds along with woolens, levy precisely the same duties on each. The so-called Dingley act of July 24, 1897 (Stat. 1897, p. 151), omits the word "worsted" in the various paragraphs of

the woolen schedule, and in paragraph 383, at the close of the schedule, defines the word "wool" as used in the act "to include wool or hair of the sheep, camel, goat, alpaca, or other animals, whether manufactured by the woolen, worsted, felt, or any other process."

For convenience of reference there is printed as an appendix to this brief some extracts from encyclopædias, describing the progress in the manufacture of wool into woolens and worsteds.

II.

The tariff legislation shows that while worsteds up to 1890 were subjected to special rates of duty, they were recognized as manufactures of wool.

I content myself with printing extracts from the tariff acts, beginning with that of 1816, and adding comments.

Act of April 27, 1816 (3 Stat., 310):

> A duty of twenty-five per centum ad valorem *on woolen manufactures* of all descriptions, of which wool is the material of chief value, *excepting* blankets, woolen rugs, and *worsted or stuff goods*, shall be levied, etc.

This recognizes worsted or stuff goods as a woolen manufacture.

Act of May 22, 1824 (4 Stat., 25):

> *On all manufactures of wool*, or of which wool shall be a component part, *except worsted stuff goods* and blankets, which shall pay twenty-five per centum ad valorem, a duty of thirty per centum ad valorem, etc.

Here again worsted stuff goods are recognized as manufactures of wool.

Act of May 19, 1828 (4 Stat., 270):

> *On manufactures of wool*, or of which wool shall be a component part (*except* carpetings, blankets, *worsted stuff goods*, bombazines, hosiery, mitts, gloves, caps, and bindings), etc.

Another recognition that worsted stuff goods is a manufacture of wool.

Act of July 14, 1832 (4 Stat., 583):

> On all milled and fulled cloth, known by the name of plains, kerseys, or kendal cottons, of which wool shall be the only material, the value whereof shall not exceed thirty-five cents a square yard, five per centum ad valorem; *on worsted stuff goods*, shawls, and other manufactures of silk and worsted, ten per centum ad valorem; * * * and *upon all other manufactures of wool* or of which wool is a component part, and on ready-made clothing, fifty per centum ad valorem.

It may be inferred from this language that worsted stuff goods are a manufacture of wool.

Act of August 30, 1842 (5 Stat., 548):

> *On all manufactures of wool*, or of which wool shall be a component part, except carpetings, flannels, bockings and baizes, blankets, *worsted stuff goods*, ready-made clothing, etc.

Another recognition of worsted stuff goods as a manufacture of wool.

Act of July 30, 1846 (9 Stat., 42).

Under Schedule C, which levies a duty of 30 per centum ad valorem, is included—

> Manufactures of cotton, linen, silk, wool, or worsted, if embroidered, etc.

On manufactures of wool, or of which wool shall be the component material of chief value, *not otherwise provided for*.

Under Schedule D, a duty of 25 per centum ad valorem is levied upon—

Manufactures of worsted, or of which worsted shall be a component material, *not otherwise provided for*.

Here is a separation of the manufactures of wool, not otherwise provided for, from manufactures of worsted, not otherwise provided for, a definite duty on each being levied.

Act of March 3, 1857 (11 Stat., 192).

This act, by reference to the tariff act of 1846, made reductions in the duties upon articles enumerated in the several schedules.

Act of March 2, 1861 (12 Stat., 252):

On woolen cloths, woolen shawls, and *all manufactures of wool* of every description, not otherwise provided for, a duty of twelve cents per pound, and in addition thereto twenty-five per centum ad valorem.

On all delaines * * *; on bunting * * *; and *on all other manufactures of worsted*, or of which worsted shall be a component material, not otherwise provided for, thirty per centum ad valorem.

Here, again, is a separation of manufactures of wool, not otherwise provided for, from manufactures of worsted, not otherwise provided for.

Act of July 14, 1862 (12 Stat., 543):

On woolen cloths, woolen shawls, and *all manufactures of wool*, of every description, made wholly

or in part of wool, *not otherwise provided for*, a duty of six cents per pound, and in addition thereto five per centum ad valorem.

On bunting, worsted yarns, and *on all other manufactures of worsteds*, or of which worsted shall be a component material, *not otherwise provided for*, five per centum ad valorem.

Act of June 30, 1864 (13 Stat., 202):

On woolen cloths, woolen shawls, and *all manufactures of wool* of every description, made wholly or in part of wool, *not otherwise provided for*, twenty-four cents per pound, and in addition thereto forty per centum ad valorem.

On bunting, and on *all manufactures of worsted*, mohair, alpaca, or goats' hair, or of which worsted, mohair, alpaca, or goats' hair shall be a component material, *not otherwise provided for*, fifty per centum ad valorem.

Act of March 2, 1867 (14 Stat., 542).

This act divides all unmanufactured wools and the hair of the alpaca, goat, and other like animals imported, into three classes—clothing wools, combing wools, and carpet wools.

On woolen cloths, woolen shawls, and *all manufactures of wool*, * * * not otherwise provided for, fifty cents per pound, and in addition thereto thirty-five per centum ad valorem.

On flannels, blankets, hats of wool, knit goods, balmorals, woolen and worsted yarns, and *all manufactures of every description composed wholly or in part of worsted*, the hair of the alpaca, goat, or other like animals, * * * not otherwise provided for, so much per pound according to value, and in addition thereto thirty-five per centum ad valorem.

Distinct duties are levied on women's and children's dress goods, etc., composed wholly or in part of wool, worsted, the hair of the alpaca, goat, or other like animals; and also on clothing ready-made, wearing apparel of every description, and balmoral skirts and skirting, etc., composed wholly or in part of wool, worsted, hair of the alpaca, goat, and other like animals, etc.

The provisions of this act, levying certain duties upon articles specially described, whether manufactured of wool, worsted, or the hair of the animals named, are similar to the provisions in the tariff acts following:

Act of June 6, 1872 (17 Stat., 230).

In the second section of this act it is provided that after August 1, 1872, 90 per centum of the rates of duty then imposed should be levied—

> On all wools, hair of the alpaca, goat, and other like animals, and all manufactures, wholly or in part, of wool, or hair of the alpaca and other like animals, except as hereinafter provided.

Here is language akin to that used in the Wilson bill; language not of commercial designation, but of description. The phrase "manufactures of wool" would cover manufactures of worsted.

Act of March 3, 1883 (22 Stat., 488).

Among the schedules of this act is "Schedule K—Wool and woolens." The act divides "all wools, hair of the alpaca, goat, and other like animals," into three classes—clothing wools, combing wools, and carpet wools, and levies a duty upon each.

> Woolen cloths, woolen shawls, and *all manufactures of wool of every description*, made wholly or in

part of wool, not specially enumerated or provided for in this act, so much per pound according to value, and in addition thereto forty per centum ad valorem.

Flannels, blankets, hats of wool, knit goods, and all goods made on knitting frames, balmoral, woolen and worsted yarns, and *all manufactures* of every description, *composed wholly or in part of worsted*, * * * not specially enumerated or provided for in this act, so much per pound according to value, and in addition thirty-five per centum ad valorem.

This act, like the McKinley bill, the Wilson bill, and the Dingley bill, provides a distinct duty on "women's and children's dress goods, coat linings, Italian cloths, and goods of like description, composed wholly or in part of wool, worsted, the hair of the alpaca, goat, or other animal;" also a duty on "clothing, ready-made, and wearing apparel of every description, * * * composed wholly or in part of wool, worsted, etc.;" also a duty on "cloaks, dolmans, jackets, etc., composed wholly or in part of wool, worsted, etc."

The provisions of the subsequent tariff laws, the McKinley bill, Wilson bill, and Dingley bill, are discussed elsewhere.

It will be observed that the acts of 1816, 1824, 1828, 1832, and 1842 recognize "worsted stuff goods" as a manufacture of wool, while levying a separate duty on them. The act of 1846 and the succeeding acts, up to and including that of 1883, separate "manufactures of wool not otherwise provided for" from "manufactures of worsteds not otherwise provided for," levying distinct duties on each, while, from the sixties on, distinct duties

are levied on articles specially described, whether manufactured of wool or worsted.

III.

Since the passage of the Dingley act of May 9, 1890, there has been no difference between woolens and worsteds for customs purposes, the same duties being levied upon each.

The Dingley Act of May 9, 1890, grew out of the decision in *Seeberger* v. *Cahn* (137 U. S., 95), in which this court held that cloths popularly known as diagonals and known in trade as worsteds, were subject to duty as a manufacture of worsted and not as a manufacture of wool, under the act of March 3, 1883. This court in that case, speaking by Mr. Justice Gray, called attention to the fact that, of the two successive paragraphs in the customs act of 1883, upon which the parties relied, the first imposed a certain scale of duties on "all manufactures of wool of every description, made wholly or in part of wool, not specially enumerated or provided for in the act," while the second imposed a lower scale of duties on "all manufactures of every description, composed wholly or in part of worsted," and then said (bottom p. 97):

> *Though worsted is doubtless a product of wool, and might in some aspects be considered a manufacture of wool*, yet manufactures of worsted being subjected by the second paragraph to different duties from those imposed by the first paragraph on manufactures of wool, it necessarily follows that a manufacture of worsted can not be considered as a manufacture of wool within the meaning of this statute.

Following this decision came the direction from Congress, in the act of May 9, 1890, to the Secretary of the Treasury, to classify as woolen cloths all imports of worsted cloth, whether known under the name of worsted cloth, or under the names of worsted, diagonals, or otherwise. This act came before this court in *United States* v. *Ballin* (144 U. S., 1), and its nature and effect were thus described by Mr. Justice Brewer, speaking for the court (bottom p. 10):

> The form of expression used in the act may be novel, but the intention of Congress is quite clear. Recognizing the fact that the Secretary of the Treasury is the head of the financial department of the Government, that to him, as its chief administrative official, is given the supervision of the tariff and all collections thereunder, it directs him to classify all worsted cloths as woolen cloths, and it gives him no discretion. He may not classify some worsteds as woolens and others as not. There is given no choice or selection, but it is the imperative direction of Congress to him, as the chief administrative officer in the collection of duties, to place all worsted cloths, by whatever name properly known, or known to the trade, within the category of woolen cloths, and, of course, if placed within that category, or, using the familiar language of the tariff, if "classified as woolen cloths," subject to the duty imposed upon such cloths. If action were necessary by the Secretary of the Treasury to put this act into force, which was not, as we think, such action was taken by the circular letter of May 13, 1890, from the Treasury Department to all customs officers, publishing the act for the information and guidance of the public.

In the act of October 1, 1890, under "Schedule K—Wool and manufactures of wool"—while the word "worsted" is used along with the word "wool," the same duties are levied upon woolen and worsted goods.

Paragraphs 375 to 387, inclusive, provide for the division of all wools, hair of the camel, goat, alpaca, and other like animals into three classes, and the levying of certain duties upon each class. Paragraphs 391 to 398, inclusive, provide for certain duties upon described articles, whether made wholly or in part "of wool, worsted, the hair of the camel, goat, alpaca, or other animals." *There is nowhere in this act a distinction in point of duty between an article made of wool and one made of worsted.* The word "worsted" seems to be used not as a word of distinction, but as a word of inclusion, from abundance of caution, in order to cover the entire ground. Really, worsted is included within wool, not being a distinct material, but a manufacture of wool made by combing long-fibered wools so that the fibers shall lie or be arranged alongside each other.

In the act of August 27, 1894, the same method of treatment is used, except that wool is put on the free list by paragraph 685, and the paragraphs of the McKinley Act classifying the wool and levying duties upon the different classes are omitted. Paragraphs 280 to 286, inclusive, of Schedule K, "Wools and manufactures of wool," of the Wilson law, impose certain duties upon certain described articles, whether composed wholly or in part of wool, worsteds, the hair of the camel, goat, alpaca, or other animals. You will search in vain in this

act for any distinction between manufactures of wool and manufactures of worsted for purposes of duty.

The act of July 24, 1897, does what should have been done before under the wool schedule—omits the needless repetition of "wool, worsted, hair of the camel, goat, alpaca, and other animals," and uses the single word "wool," defining this word in paragraph 383 "to include wool or hair of the sheep, camel, goat, alpaca, or other animal, whether manufactured by the woolen, worsted, felt, or any other process."

What the law has not recognized since May 9, 1890, this court in this case is requested to create—a distinction between manufactures of wool and manufactures of worsteds for customs purposes, and to levy a different duty upon worsteds from that levied upon woolens.

IV.

The situation existing at the time the Wilson bill was under consideration led Congress to postpone the reduction of duties on manufactures of wool in order to induce the great jobbers, in the spring of 1894, to place their orders for the fall trade with the American manufacturers, and, in turn, induce the latter to buy the spring clip of the American farmers. The American manufacturer was guaranteed protection in the fall market to induce him to buy the spring clip of the American farmer. The protection thus guaranteed applied to both worsteds and woolens—to all goods manufactured out of raw wool.

A reference to the proceedings of Congress may properly be made to inform the court of the exigencies of the woolen interests, both wool raisers and manufacturers of

wool, and the reasons for postponing the reduction in the duty on goods manufactured of wool. *American Net and Twine Company* v. *Worthington*, 141 U. S. 468, 474, and cases cited.

> Another guide to the meaning of a statute is found in the evil which it is designed to remedy, and for this the court properly looks at contemporaneous events, the situation as it existed, and as it was pressed upon the attention of the legislative body. *Holy Trinity Church* v. *The United States*, 143 U. S. 457, 463.

The act of 1890, under the title "Schedule K—Wool and manufactures of wool," laid duties on wool and on articles manufactured of wool, whether by the combing or carding process, whether worsteds or woolens. The act of 1894, under the same heading, struck off the duties on wool and reduced the duties on articles manufactured of wool. It immediately became a question before Congress as to the effect of this reduction upon the woolgrowing and wool-manufacturing industries of this country. The raw material, wool of the sheep, put on the free list, was used indifferently in the manufacture of articles, both by the woolen and worsted processes. The manufacturers of woolen goods in this country made both worsteds and woolens.

In order to advise Congress on the subject under consideration, by joint resolution (House, February 28, 1893; Senate, March 3, 1893) it was ordered that there be printed a new edition of a special report of the Chief of the Bureau of Statistics relating to wool and the manufacture of wool, to be brought down to date. In compliance with this, there was submitted to Congress a

"Report upon the production, commerce, and consumption of wools and manufactures of wools in the leading nations of the world." This publication included data as to both woolens and worsteds, and in particular the tables of Helmuth, Swartz & Co., in which woolens and worsted are tabulated together. These tables were frequently referred to in the debate.

The Senate Committee on Finance sent out a circular of inquiry, dated December 20, 1893, requesting information with respect to the woolen industry. The replies are printed in Report No. 511, Fifty-third Congress, second session, ordered printed on July 10, 1894. The information contained in these reports was before Congress at the time of the consideration and passage of the act of August 27, 1894. As a sample reply, I refer the court to No. 6048, Report, page 53, from the Botany Woolen Mills, of Passaic, N. J., *manufacturers of woolen and worsted dress goods*, etc., in which the following suggestions appear:

> In our line the sudden change from high protection on wool to free wool is the only cause for the present depression in trade, and if such a remarkable depression is wished to be minimized, then only a gradual lowering of duties annually on raw material can accomplish the tendency without doing the enormous damage that such a sudden change is bound to do. * * *
>
> If changes are wanted toward decreased duties, we would recommend that the duty for wool be lowered from 11 to 8 cents for the first year, from 8 to 5 cents for the second year, etc., with compensatory duties in said respective periods in a like pro-

portion to the schedule of the existing law, *but with the provision that the duty on manufactures of wool so decreased go into effect six months after the respective lowered duty on raw wool would go into effect.*

Not with a view of presenting the reasons why a particular Member of Congress voted for a bill, nor his conclusions as to the proper construction of the language used, but in order to place before the court the situation as it then existed and was presented to Congress, I quote the language of Mr. Wilson, used January 17, 1894 (Congressional Record, vol. 26, part 1, p. 946):

> Now, Mr. Chairman, I simply want to call the attention of the committee to the amendment upon which we are about to vote. The amendment which I have offered on behalf of my fellow-members of the Democratic side of the Ways and Means Committee is to fix the date when the proviso for free wool shall go into effect as the 1st of August, *to be followed up with an amendment fixing the day at which the reduction contained in the woolen schedule shall take effect as the 1st of December.* We were just as reluctant to present this when it was introduced yesterday as the most impetuous members on this side to whom its first presentation seems to be an unwelcome proposition, but the whole question is summed up in a few words.
>
> *The great jobbers of the country, Marshall Field, Arnold & Constable, and the other great purchasers of woolen goods, are hesitating now, this very day, whether to give their orders for the fall trade to foreign manufacturers or to American manufacturers, and unless we fix these dates definitely they will probably give the great bulk to foreign manufacturers, taking the chances of bringing them in under the reduced tariff*

rates. With the dates fixed at the days we propose they will put their orders to a very large extent with the home manufacturers. Our own mills can do the usual work through the winter months, and our own farmers can find a market, the only market they have, for the sale of their spring clip of wool. It is for that reason, Mr. Chairman, that we have presented these two dates and ask the committee now to vote upon them.

Thus it appears that what was before Congress was the fact that if, in January, 1894, it was made known that the reduction of the duties on articles manufactured of wool would be postponed for four months after the act, with its provisions for free wool, went into effect in August, the woolgrowers would find a market for their spring clip at the woolen mills in this country, and these mills would keep running on orders from the great jobbers of the country, who had to buy from them, because the reduced duties on woolen goods would not go into effect until the 1st of December (afterwards changed to the 1st of January). The policy of the postponement of the reduction in the duties on woolen goods applied to all goods of which wool was the raw material. The mode of manufacturing the wool into the finished fabrics, whether by worsted or other process, cut no figure.

It is true there was a further provision in paragraph 297, as it passed the House, for additional reductions in all rates of duty in the woolen schedule. This provision was stricken out in the Senate, which was opposed to further and additional reductions of duties, and which, indeed, amended the Wilson bill, as it passed the House,

so as to make it to a considerable extent a protective-tariff measure. The additional reduction thus stricken out applied to all rates in the woolen schedule. The postponement of the reduction of duties applied only to goods manufactured of wool. Congress had in mind the woolgrowers of this country and the woolen mills.

V.

The rule stated in Arthur v. Rheims (96 U. S., 143) does not apply, but the principle laid down in Barber v. Schell (107 U. S., 617) does. Worsted dress goods are not made dutiable, by paragraph 283, eo nomine, or by commercial designation, or by rates distinct from those imposed on woolen dress goods, so that nothing stands in the way of applying to them the provisions for a postponement of the reduction in duties, in paragraph 289, the general words "manufactures of wool" therein being directed to the raw material out of which the goods are made, and including all products of wool, by whatever process manufactured.

With the passage of the so-called Dingley bill of May 9, 1890, the distinction between worsteds and woolens, for duties purposes, ceased to exist in the customs laws of this country. The same Congress which passed this bill, enacted the tariff act of October 1, 1890, levying precisely the same rates of duties on worsteds as on woolens. From this time duties under the woolen schedule were levied on manufactures of wool, according to their description, without reference to whether made by the combing or carding, by the worsted or other process. The word "worsted" was retained in the acts of 1890 and 1894, but it was no longer used in contrast to "wool,"

but in conjunction with it; it ceased to be used as a word of distinction, and became one of inclusion, of comprehensive description.

Following a principle common among parliamentary draftsmen, the broader term "wool" was followed by the narrower term "worsted," really included within it, just as in the Constitution Congress is given power "to lay and collect taxes, duties, imposts, and excises." "Taxes" includes "duties, imposts, and excises," but the latter words follow because deemed conducive to greater certainty, more comprehensive expression. (Cooley's Constitutional Limitations, 55.) The act of 1890 divides "all wools, hair of the camel, goat, alpaca, and other like animals," into three classes, and levies a duty on each class. Wool of the sheep, and hair of the camel, goat, alpaca, and other like animals, cover and include the raw material out of which the articles made dutiable by paragraphs 391 to 398, inclusive, are manufactured. The duties on the manufactured articles are compound—a specific duty per pound based on the duty imposed by the act on a pound of unwashed wool of the first class, and in addition an ad valorem duty of a certain per centum.

Paragraph 392 imposes "on woolen or worsted cloths, shawls, knit fabrics, and all fabrics made on knitting machines or frames, and all manufactures of every description made wholly or in part of wool, worsteds, the hair of the camel, sheep, goat, alpaca, or other animals, not specially provided for in this act, valued at not more than thirty cents per pound," a duty per pound of

"*three times the duty imposed by this act on a pound of unwashed wool* of the first class, and in addition thereto forty per centum ad valorem."

In the case of "women's and children's dress goods," etc., composed wholly or in part of wool, worsted, etc. (paragraph 395), in place of the duty per pound, a specific duty of 12 cents per square yard is levied, in addition to the ad valorem duty, with the proviso that, "on all such goods weighing over four ounces per square yard the duty per pound shall be *four times the duty imposed by this act on a pound of unwashed wool* of the first class, and in addition thereto fifty per centum ad valorem.

In short, additional protection is accorded articles manufactured of wool because of the duty laid on wool, and this protection takes the form, in the act of 1890, of a specific duty, based in certain cases upon the weight of the fabric, computed according to the duty imposed by the act on a pound of unwashed wool of the first class.

The act of 1894 put wool on the free list, and struck out the specific duty per pound or yard. Take paragraph 283, providing for the duty "on women's and children's dress goods," etc. (being the paragraph involved in this case); the same ad valorem duty is levied, but the specific duty is omitted. In other words, wool being put on the free list, the compensatory duty on manufactures was no longer needed.

The Wilson bill was under consideration from the time Congress met in December, 1893. In January, 1894, Mr. Wilson announced, as the policy of those who had the bill in charge, a postponement of the reduction of the duty

on manufactures of wool for about four months after the bill went into effect. This was for the purpose of furnishing a market to the farmers for the spring clip of 1894, and to guarantee the manufacturers protection in the fall market of 1894 for goods manufactured out of dutiable wool. The considerations operating upon Congress applied to all products of wool, by whatever process manufactured. The controlling consideration was the fact that the raw material—wool of the sheep—was to be put on the free list. To protect those interested in the raw material—the farmer in raising it, the manufacturer in buying it—the reduction of the duties on the manufactured article was postponed for four months.

This is not a case to be decided on purely technical grounds. The language involved is not language of commercial designation. The reasons for the postponement of the reduction in duties were broad and general, and the language used to carry into effect the purpose of Congress was also broad and general. The object of the Wilson bill was to reduce duties. The bill itself went into effect on August 27, 1894. There must have been a special reason for postponing the reduction of duties on manufactures of wool. This reason was the one stated. The language is to be construed so as to effectuate the policy of Congress in postponing the reduction of duties on goods manufactured of wool.

The decisions of the lower courts were based upon technical grounds, the contention of opposing counsel being that this was a case for the application of the rule that "where an article is specially provided for in a tariff act,

general terms in the same or a subsequent act, which would otherwise include it, have no application to it," citing *Arthur* v. *Rheims*, 96 U. S., 143; *Arthur* v. *Lahey*, 96 U. S., 112; *Worthington* v. *Abbott*, 124 U. S., 434; *Robertson* v. *Salomon*, 130 U. S., 412, and *Robertson* v. *Glendenning*, 132 U. S., 158. This rule is invoked upon the assumption that paragraph 283 of the act of 1894 provides for a duty on "worsted dress goods" *eo nomine*.

I have no quarrel with the rule, but it does not apply in this case. Paragraph 283 of the act of 1894 does not levy a duty on "worsted dress goods" *eo nomine*. It does not levy a duty on "worsted dress goods" by a commercial designation. It does not levy a duty on "worsted dress goods" as distinguished from woolen dress goods. It does not levy a separate and distinct duty upon "worsted dress goods." It levies a duty on *dress goods* whether made of "wool, worsted, the hair of the camel, goat, alpaca, or other animals." The goods are defined neither specifically, *eo nomine*, nor by a commercial designation, but by a special description addressed to the quality and material of the goods in question. The quality is "women's and children's dress goods," etc.; the material, "wool, worsted, the hair of the camel, goat," etc. The case of *Barber* v. *Schell* (107 U. S., 617), is in point. In that case the words "cotton laces, cotton insertings," etc., used in the act of 1846, were held to be designations of articles by special description of quality and material, and the general provisions in the act of 1857 transferring to schedule C "all manufactures composed wholly of cotton which are

bleached, printed, painted, or dyed," thus imposing a different duty on such goods, was held to apply. The court, speaking by Mr. Justice Blatchford, says (p. 621):

> The designations qualified by the word "cotton" in the act of 1846 are designations of articles by special description, as contradistinguished from designations by a commercial name or a name of trade. They are designations of quality and material.

The cases of *Homer* v. *The Collector* (1 Wall., 486), *Reiche* v. *Smythe* (13 Wall., 162), *Smythe* v. *Fiske* (23 Wall., 374), *Arthur* v. *Morrison* (96 U. S., 108), *Movius* v. *Arthur* (95 U. S., 144), *Arthur* v. *Lahey* (96 U. S. 112), and *Arthur* v. *Rheims* (96 U. S. 143), are distinguished by the court on the ground that the principles involved in those cases and similar cases is, that the special designation of an article by a commercial name will prevail over a general term in a later act, but that this principle had no application to the case of *Barber* v. *Schell*, which was not, as to cotton laces and cotton insertings, one of designation by commercial name. (107 U. S., p. 623.) The court cites with approval the case of *Reimer* v. *Schell* (4 Blatchford, 328), in which it was held that certain colored hosiery, composed wholly of cotton, came within the description of "all manufactures, composed wholly of cotton, which are bleached, printed, painted, or dyed," used in the act of 1857. With respect to the phrase "all manufactures, composed wholly of cotton, which are bleached, etc.," Nelson, judge, says (bottom p. 329):

> The goods fall directly within the description, "all manufactures, composed wholly of cotton, which are bleached, printed, painted, or dyed."

> The legislature designates the articles by special description as contradistinguished from a designation by a commercial name; and the proper inquiry is as to their qualities and characteristics, with a view to ascertaining if they come within the description. If they do, no argument can take them out of the rate of duty which has been imposed.
>
> It is said that there are various manufactures composed wholly of cotton, bleached, printed, painted, or dyed, other than cotton hosiery, such as muslins, lawns, calicos, velvets, handkerchiefs, etc., to which the clause applies; and such is the proof in the case. But, if the hosiery in question comes equally within the description, I see no reason for distinguishing these goods from those above referred to, and which it is admitted fall within the section.

The rule here stated applies in construing the words "manufactures of wool" in paragraph 297 of the act of 1894. These words do not constitute a special designation *eo nomine*, nor do they amount to a commercial designation. The articles with respect to which the reduction of duties is postponed are designated by special description as contradistinguished from designation *eo nomine* or by a commercial name. To ascertain whether an article comes within this description it is necessary to inquire as to the material out of which it is made. Such inquiry in the case of worsted dress goods results in ascertaining that the material out of which the article is produced is wool. This fact—the fact as to the raw material out of which made—settles the question and brings the article within the description of paragraph 297. The process of manufacture, whether the comb-

ing or carding, whether the worsted or felt, does not postpone the reduction, but the material does. If the article is made of the wool of the sheep, the reduction does not take effect. The cases of *Elliott* v. *Swartout* (10 Pet., 137), *Riggs* v. *Frick* (Taney, 100), and *Seeberger* v. *Cahn* (137 U. S., 95) are not in point. The tariff provisions involved in those cases separated worsteds from woolens for dutiable purposes, levying a distinct rate of duty on worsteds from that levied on woolens. Within the meaning of those statutes manufactures of worsted could not be regarded as manufactures of wool. Mr. Justice Gray, speaking for the court in *Seeberger* v. *Cahn*, was careful to point this out (137 U. S., bottom p. 97):

> Though worsted is doubtless a product of wool, and might, in some aspects, be considered a manufacture of wool, yet, manufactures of worsted being subjected by the second paragraph *to different duties* from those imposed by the first paragraph on manufactures of wool, it necessarily follows that a manufacture of worsted can not be considered as a manufacture of wool within the meaning of this statute.

But in the present case there is no distinction made by the statute between worsteds and woolens. For dutiable purposes the acts of 1890 and 1894 treat wool and worsted as equivalent expressions. Within the meaning of these acts, worsted is not only a product of wool, but is considered and treated as a manufacture of wool.

It may be asked, Why not construe "wool," in paragraph 297 of the act of 1894, so as to include the hair

of the camel, goat, alpaca, and other like animals? Why restrict the postponement of the reduction of duties to manufactures of wool and not hair?

The acts of 1890 and 1894 distinguish between "wool of the sheep" and "hair of the camel, goat, alpaca, and other like animals," as raw material. There is no line drawn between wool and worsted as raw material. What Congress had in mind when inserting paragraph 297 in the act of 1894 *was to take care of the wool industry* of this country—farmers and manufacturers. *It was not looking out for the camel industry, or the goat industry, or the alpaca industry;* so it used language which applied to the matter under consideration, "wool." To furnish the farmers a market for the spring clip of 1894, to guarantee the manufacturers the fall market for goods made out of the spring clip, was the object of Congress.

Suppose paragraph 297 had read: "The reduction of the rates of duty herein provided for manufactures of wool of the sheep, and hair of the camel, goat, alpaca, and other like animals, shall take effect January 1, 1895," would anyone contend that goods manufactured of wool by the worsted process were not included?

VI.

The Dingley Act of May, 1890, was an administrative measure, amounting to a legislative direction that thereafter worsteds should be treated as woolens for dutiable purposes. With the policy thus defined by Congress, and since pursued in all tariff enactments, this court will not interfere.

The Dingley Act of May 9, 1890, construed in *United States* v. *Ballin* (144 U. S., 1), directing the Secretary of the Treasury to classify as woolen cloths all imports of worsted cloth, whether known under the name of worsted cloth or under the name of worsted, or diagonals, or otherwise. This act has never been expressly repealed, and many authorities might be cited showing it has not been repealed by implication. In the circuit court of appeals it was contended by counsel for the Government that the Dingley Act was intended to abrogate the old rule of construction based on the commercial designation; that worsteds were thereafter to be classified as woolens, and that therefore it was a permanent instruction, to be followed by customs officers until expressly repealed, irrespective of changes which might be subsequently made in rates of duty on woolen or on worsted cloth. Respecting this contention Judge Lacombe says (Rec. p. 20):

> If the Dingley Act were given the construction approved by the circuit court in the southern district of New York in *Ballin* v. *United States* (45 Fed. Rep., 170), there might be force in this contention. It was held in that case that this statute was purely administrative, regulating a special method of classification to be carried out by official action of the Secretary of the Treasury, and with nothing on its face to indicate that it was intended to repeal or in any way alter any act imposing customs duties. If it were a mere administrative regulation, it might fairly be urged it would remain in force until some other administrative statute described some different method of classification. But the difficulty here is

that this decision of the circuit court was reversed by the Supreme Court. (*United States* v. *Ballin*, 144 U. S., 1.) That court held it was a self-executing act providing for a rate of duty on woolen cloths. In other words, its effect was to amend the tariff of 1883 by inserting therein a provision for worsted cloths, laying upon such cloths the same rate of duty as that tariff prescribed for woolen cloths. Subsequently the McKinley Act of October 1, 1890, was passed. It contains paragraphs covering the entire field of wool and worsted manufactures, including woolen and worsted cloths, and of course supersedes the earlier tariff act of 1883, and the Dingley Act, which, as construed by the Supreme Court, was simply an amendment of that act. The Dingley Act is therefore no longer in force.

A careful reading of the decision of the Supreme Court in *United States* v. *Ballin* will show that this court held the Dingley Act to be an administrative act, an imperative direction to the Secretary of the Treasury, as the chief administrative officer in the collection of duties, to place all worsted cloths, by whatever name properly known or known to the trade, within the category of woolen cloths; in other words, to classify all worsted cloths as woolen cloths, and of course, if so classified, subject to the duty imposed on such cloths. Of course, the effect of this act was to make the duties on worsted cloths after that time such as were placed by the act of 1883 on woolen cloths.

Since the passage of the McKinley Act, the necessity for applying the direction in the Dingley Act, in the classification of worsteds as woolens, ceased to operate,

because the same duties were levied by the McKinley Act on articles manufactured of wool, whether by the woolen or worsted process; but in view of the enactment of paragraph 297 of the Wilson Act and the contention of the importers that a line of distinction should be drawn between worsteds and woolens for dutiable purposes, the Dingley Act, in its administrative feature, operates as a prohibition to customs officers to admit of any distinction in classification between worsteds and woolens for dutiable purposes.

Ever since May, 1890, when the Dingley Act was passed, Congress, following the line of policy therein marked out, has steadily refused, in its tariff enactments, to recognize any distinction for customs purposes between woolens and worsteds. Will this court renew a distinction which Congress has wisely discarded?

It is submitted that the judgment below should be reversed.

JOHN K. RICHARDS,
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DECEMBER 15, 1897.

APPENDIX.

PROGRESS IN THE MANUFACTURE OF WOOL INTO WOOLENS AND WORSTEDS.

1843. Penny Cyclopædia. London. Vol. 27.

"Wools are divided into two great classes—*clothing wools* and *combing wools*, or *short wools* and *long wools;* and the fabrics woven from them are termed *woolens* or *worsteds* according as the one or the other is employed. Clothing wools possess in high perfection that peculiar property which enables the fibers to "felt" or interlace one among another and to form thereby the dense, compact material of which men's garments are so largely made in this country; whereas combing wools, though *long* in fiber, are *deficient* in the *felting* property and are therefore employed for *stuffs*, merinos, hosiery, and a large number of fabrics which do not undergo the felting process. The manner in which these differences affect the routine of manufacture will be seen further on."

Page 553:

"The long wools for worsted fabrics, not requiring to undergo the felting process, pass through a circle of operations *different* from those hitherto noticed. * * * *All* combing wools are longer in fiber than the clothing wools, but they are subject to the division into long and short combing wools; the long, varying from *six* to *twelve* inches in length, being used principally for *coarse worsted goods*, and the short, from four to seven inches, being used for hosiery and some other purposes."

1856. Encyclopedia Americana. Boston. Vol. 13, p. 252.

"There are two sorts of wool which afford the basis of different fabrics, the long wool or worsted, in which the fibers are rendered parallel by combing, the material of which *camlets, bombazines*, etc., are made, and the short wool prepared by carding, like cotton, which is used, in different degrees of fineness, for *broadcloths, flannels*, and a *multitude* of *other fabrics*. * * * In articles which are made of long wool the texture is *complete* when the stuff issues from the loom. * * * But in cloths made of short wool the web is, etc., * * * and requires to be submitted to another operation called felting, by which the fibers are made to felt and combine more closely."

1863. New American Cyclopædia. New York. Vol. 16, p. 542:

"As the rule, then, the short-stapled fleece wools *only are made into cloths*, both the long fleece and pulled wools going to the *other sort of fabrics*. The length of fiber in the former ranges usually from *one* to *three* or *four inches;* if longer, it is cut before working. The two distinct classes of fabrics thus established are those known, respectively, under the general appellations of woolens and worsteds. It has, however, *become not unusual* to *intermix* some portion of long or *combing wool* in *cloths proper*, while in the making of *merinos* and many other *worsted fabrics* definite proportions of other materials, more commonly cotton, are now *regularly* and very *generally combined*, both these deviations from the ostensible characters of the goods being facilitated by the *improvements*, or at least modifications, introduced into *the modern machinery employed in the factories.*"

* * * * *

"Thus the sharp distinction between woolens and worsteds on the one hand, and between these and fabrics

of other material on the other, has in part disappeared, and worsteds which could originally be said to be made from combed, not carded, wool, must now be described as made from wool either combed or combed and carded, and moreover as being generally not of simple wool, but mixed fabrics."

* * * * *

"The combing of the wool is still performed by hand in some instances, though more commonly by machinery." * * *

"The worsted manufactures of England have now for many years been gaining upon those of woolens, among the causes of this change being * * * that the improvements in machinery have greatly facilitated the combing of the wool, and *even of that having a shorter fiber than could formerly be worked in this way*, &c."

The tendency thus being for worsteds to overtake woolens, and the two processes to approach each other in similarity of product, we find their manufacture stands in 1888 as follows:

1888. Encyclopædia Britannica, ninth edition, vol. 24, p. 658.

The general distinction between woolens and worsteds is given, then follows:

"At all points, however, woolen and worsted yarns as thus defined overlap each other, some woolens being made from longer wool than certain worsteds, and worsteds being when *made* from *short-staple* wool also *carded* as well as *combed;* and occasionally worsted yarn is spun on the mule frame, while originally confined to woolens, milling or felting is a *process done in all degrees*, woolen being sometimes not at all milled, while to some worsteds a certain milling finish is given." * * *

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